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FEDERAL ACT REGULATING GRAIN EXCHANGE HELD INVALID.

The Federal Statute known as the Grain Future Trading Act has been declared by the Supreme Court of the United States, in Hill v. Wallace, 42 Sup. Ct. 453, to be invalid. This statute imposed regulations on grain Boards of Trade, and sought to enforce obedience thereto by imposing a tax on those not complying with the regulations. It was not in any way limited to transactions in interstate commerce, or to transactions within the state which were essential to the free flow of interstate commerce. Evidently it was passed by Congress under what that body thought to be its taxing power. But it was apparent that the taxes imposed were for the purpose of enforcing the regulatory provisions of the statute. In fact, the Court declared that the act is in essence and on its face a complete regulation of Boards of Trade, with a penalty of twenty cents a bushel an all "futures" to coerce Boards of Trade and their members into compliance. "When this purpose is declared in the title to the bill, and is so clear from the effect of the provisions of the bill itself, it leaves no ground upon which the provisions we have been considering can be sustained as a valid exercise of the taxing power. The elaborate machinery for hearings by the Secretary of Agriculture and by the commission of violations of these regulations with the withdrawal by the commission of the designation of the board as a contract market and of complaints against persons who violate the act or such regulations and the imposition upon them of the penalty of requiring all Boards of Trade to refuse to permit them the usual privileges, only confirm this view."

The Court stated that the decision in Bailey v. Drexel Furniture Company, 42 Sup. Ct. 449, involving the constitutional validity of the Child Labor Tax Law, completely covers this case. In the Drexel Furniture Company case the Court distinguishes between cases like Veazie Bank v. Fenno, 8 Wall. 533, and McCray v. United States, 195 U. S. 27, in which it was held that this Court could not limit the discretion of Congress in the exercise of its constitutional powers to levy excise taxes because the Court might deem the incidence of the tax oppressive or even destructive. It was pointed out that in none of those cases did the law objected to show on its face, as did the Child Labor Tax Law, detailed regulation of a concern or business wholly within the police power of the state, with a heavy exaction to promote the efficacy of such regulation. In this respect the Court in the Drexel Furniture Company case said:

"Out of a proper respect for the acts of a co-ordinate branch of the government, this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting from the weight of the tax, it was intended to destroy its subject. But in the act before us the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the states."

Having disposed of the question of whether or not the Statute could be sustained under the taxing power, the Court then considered whether or not it came within the power of Congress to regulate

interstate commerce. It was pointed out that there was not a word in the act from which it could be gathered that it was confined in its operation to interstate commerce. The words "interstate commerce" were not to be found in any part of the act. The transactions upon which the tax was to be imposed, the bill alleged, were sales made between members of the Board of Trade in the City of Chicago for future delivery of grain, which would be settled by the process of offsetting purchases or by a delivery of warehouse receipts of grain stored in Chicago.

"Looked at in this aspect, and without any limitation of the application of the tax to interstate commerce, or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce, we do not find it possible to sustain the validity of the regulations as they are set forth in this act. A reading of the act makes it quite clear that Congress sought to use the taxing power to give validity to the act. It did not have the exercise of its power under the commerce clause in mind, and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter clause."

In Ware & Leland v. Mobile County, 209 U. S. 405, it was held that contracts for the sales of cotton for future delivery which did not oblige interstate shipments are not subjects of interstate commerce, and that a state tax on persons engaged in buying and selling cotton for future delivery was not a regulation of interstate commerce or beyond the power of the state.

"It follows that sales for future delivery on the Board of Trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon." It was upon this principle that the Court, in Stafford v. Wallace, 42 Sup. Ct. 397, held it to be within the power of Congress to regulate business in the stockyards of the country, and including therein the regulation of commission men and of traders there, although they had to do only with sales completed and ended within the yards, because Congress had concluded that through exorbitant charges, dishonest practices and collusion they were likely, unless regulated, to impose a direct burden on the interstate commerce passing through.

NOTES OF IMPORTANT DECISIONS.

LESSEE NOT RELIEVED OF LIABILITY FOR RENT BY LAW MAKING INTENDED USE OF PREMISES ILLEGAL.—The case of Imbeschied v. Lerner, 135 N. E. 219, decided by the Supreme Judicial Court of Massachusetts, was an action for rent of premises which were leased for the purpose of carrying on a liquor business, and the defense was that defendant was relieved from the performance of the covenantes of the lease by the Eighteenth Amendment. Following a description of the property the lease provided that, "said premises to be used for the purpose of carrying on liquor business." The lease also contained the following:

"And the lessee covenants that * * * he will not, without the consent in writing of the lessors, assign this lease, nor underlet the whole or any part of said premises * * * that they will not make any unlawful, improper, or offensive use of said premises * * * that no use be made of said premises other than that above specified."

The following is the principal proportion of the Court's opinion in this case:

"It is the contention of the defendant that, because the sale of intoxicating liquors for beverage purposes is prohibited by the federal amendment making it impossible after its ratification longer to carry on the liquor business on the demised premises, he is relieved from the performance of the covenants in the lease. We are unable to agree with this contention. When the lease was executed, and for a long period of time thereafter, it was possible for the defendant to carry on the liquor business on the leased premises; and during that time he was there engaged in that business. The contract embodied in the lease was lawful and valid when executed; the fact that afterwards the adoption of the amendment prevented the defendant from longer con-

ducting the liquor business on the premises does not release him from liability under the covenant to pay the stipulated rental for the entire term, in the absence of any provision in the lease that the rent should be abated in whole or in part in the event of such business becoming illegal. As was said in Gaston v. Gordon, 208 Mass. 265, at page 269, 94 N. E. 307, at page 309:

"But by express terms of the lease rent would still have been due. The inference is unavoidable that if it had been intended to make the whole instrument dependent upon the granting of a license to the lessee, a clause to that end would not have been omitted. The lessee has bound himself in unmistakable language to pay the rent without any qualification dependent upon his failure to obtain the necessary authority from public officers. Although this mischance renders it impossible for him to make the valuable use of the property which was contemplated, that was a contingency which ought to have been foreseen, and some anticipatory provision of partial or entire exoneration from liability inserted in the lease if such was the intention of the parties."

We are unable to perceive any distinction in principle between the facts in the case last cited and those in the case at bar. The inability of the defendant to carry on the liquor business because of the prohibition contained in the federal amendment cannot relieve him from his contract, any more than he would be so exonerated in the event that the vote of the city had been against the sale of intoxicating liquors, or the licensing board had refused to grant him a license to be exercised on the leased premises. The sale of intoxicating liquors is well known to be a subject of regulation, restriction and prohibition by statute and by constitutional amendment. If the defendant desired to have protected himself from liability to pay rent, a clause for that purpose should have been inserted in the lease. He seeks to invoke the familiar rule that a contract which cannot be performed without violating the law is void. This is a good rule of law, but it is not applicable to the present case. It is well settled that a tenant is liable for rent in the absence of stipulation if a building upon leased premises is destroyed by fire. Davis v. Alden, 2 Gray, 309; Roberts v. Lynn Ice Co., 187 Mass. 402, 73 N. E. 523. We cannot doubt that the defendant is liable upon his covenant to pay rent, notwithstanding the adoption and ratification of the Eighteenth Amendent during the term of the lease. Taylor v. Finnigan, 189 Mass. 568, 76 N. E. 203, 2 L. R. A. (N. S.) 973; Gaston v. Gordon, supra; Robbins v. McCabe, 239 Mass. 275, 131 N. E. 799; Goodrum Tobacco Co. v. Potts-Thompson Liquor Co., 133 Ga., 776, 66 S. E. 1081, 26 L. R. A. (N. S.) 498; Houston Ice & Brewing Co. v. Keenan, 99 Tex, 88 S. W. 197.

CUSTOM OF CHILDREN TO RIDE ON ICE WAGON IS ADMISSIBLE AGAINST THE EMPLOYER.—The case of Fry v. Southern Public Utilities Co., 111 S. E. 354, decided by the Supreme Court of North Carolina, was an action to recover for the death of plaintiff's son while he was riding on an ice wagon of the defendant which collided with a street car. Defendant claimed that it had given instructions to prohibit boys from riding on the steps of its wagons. The Court held that the Plaintiff could show that it was a custom of the boys, not objected to by the drivers of the wagon, to ride on the steps, for the purpose of showing that, if the order was given, it had been abrogated or at least waived. We give the language of the Court briefly on this question as follows:

"If the first assignment of error is sufficiently stated under our rules, we are of the opinion that it is without any substantial merit. It was competent to prove the custom of small boys to jump upon the rear step of the wagon to ride and get bits of ice for several reasons, and, among them, to answer the contention of defendant that instructions had been given to the drivers not to permit riding on the wagon by small boys. If such order was given, the plaintiff surely was entitled to show that it had been constantly violated, for a long time, with the knowledge of the drivers and those in charge of the wagon, from which the jury could well infer that the owner of the wagon had notice of its non-observance and that it was an order of the company more honored in the breach than in the observance, and, in legal contemplation, it had abrogated or, at least, waived."

WIFE'S ENDORSEMENT OF CERTIFICATES OF DEPOSITS DOES NOT TRANSFER HER INTEREST TO HUSBAND.—The case of Dacurso v. Dacurso's Estate, 239 S. W. 890, decided by the St. Louis Court of Appeals, holds that the endorsement by a wife of certificates of deposits owned by her is not sufficient to satisfy the terms of a statute which requires the terms of a wife's assent to the transfer of her interest to be in writing.

"The record as a whole, including the stipulation filed, tends to show that the money which Dacurso left in savings accounts or in certificates of deposit in the city of St. Louis was derived from the funds originally on deposit in the Flat River bank, including the total of these four certificates of deposit which were paid by the Flat River bank as they fell due. There is nothing in the evidence touching the indorsement of the certificates by plaintiff. If they were not indorsed by her, but were collected by Dacurso without her indorsement, then obviously, if they were her property, her husband could not thus divest her of title thereto or to the proceeds thereof; and on the other hand, if the certificates of deposit were indorsed by plaintiff, such indorsement alone was insufficient to satisfy the statute requiring the terms of the wife's assent to be in writing. See McGuire v. Allen, 108 Mo. 403, 18 S. W. 282; Hurt v. Cook, 151 Mo. 416, 52 S. W. 396; Case v. Espenschied, 169 Mo. 215, 69 S. W. 276, 92 Am. St. Rep. 633; Egger v. Egger, 225 Mo: 116 loc. cit. 140, 123 S. W. 928, 135 Am. St. Rep. 566."

VENDEE'S LIEN FOR PURCHASE MONEY ON VENDOR'S FAILURE TO COMPLETE HIS CONTRACT.

It is elementary law that a person who has been induced by fraudulent representations to become the purchaser of property has, upon discovery of the fraud, three remedies open to him, either of which he may elect. He may rescind the contract absolutely and sue in an action at law to recover the consideration parted with upon the fraudulent contract. He may bring an action in equity to rescind the contract and in that action have full relief, or he may retain what he has received, and bring an action at law to recover the damages he may have sustained.

There sometimes arises a situation in which a purchaser of land has paid part or all of the consideration and has, or will suffer or incur loss or damage on account of false and fraudulent representations, or because the vendor is unable to convey good title, and might prefer to go into a court of equity on a bill for the establishment of a lien upon the land for the money paid thereon, and for a decree for its foreclosure in the usual way.

There seems to be practically unanimity among the text writers that the right to such a lien exists in favor of a vendee under the circumstances stated, it being also understood that the vendee himself is not at fault in any way. But the adjudicated cases are not very numerous, and we believe that a majority of the states of the Union have never passed upon the question at all. This will strike the thoughtful lawyer as rather singular, for the right to such a lien in many cases would be of the very last importance.

As showing the general rule as stated in the text books a few of them are as follows:

The first text writer who announced the rule was Sugden in his work on Vendors and Purchasers, the first edition of which bears the imprint of the year 1805.

Judge Story in his "Equity Jurisprudence," (Section 789) says:

The general principle upon which this doctrine proceeds is, that "from the time of the contract of sale of the land, the vendor, as to the land, becomes a trustee for the vendee,and the vendee, as to the purchase money, a trustee for the vendor, who has a lien upon the land therefor."

Perry, in his work on Trusts,[1] says: "If the purchaser has paid the purchase money the vendor becomes the mere trustee of the legal title for the purchaser; so, if the purchaser has paid part of the purchase money, the vendor becomes the trustee to the extent of the money paid."

Jones, in his work on Liens,[2] says: "Money paid by a vendee of land prematurely, or before receiving a conveyance, is a charge upon the estate in the hands of the vendor, or in the hands of the grantee with notice. And so, if a purchaser makes a deposit on account of the purchase money at the time of executing an agreement of purchase, which is not completed because the vendor is unable to give a good title, the purchaser has a lien upon the land for the money so paid."

Pomeroy in his work on "Equity Jurisprudence" says:

"The lien of the vendee under a contract for the purchase of land for the purchase money paid by him before a conveyance is the exact counterpart of the grantor's—or, as it is commonly called, the vendor's—lien, and in the latter case the legal title has been conveyed to the grantee and yet the grantor retains an equitable lien upon the land as security for the purchase price agreed to be paid. In the former case the legal title remains in the vendor, who has simply agreed to convey, while the vendee, although having as yet acquired no legal interest in the land by virtue of the contract, does obtain a lien upon it as security for the purchase money he has paid, and for the performance of the vendor's obligation to convey. In England therefore, and in the American states where the grantor's lien has been adopted, the vendee's lien upon the lands contracted to be sold as a security for so much of the purchase price as he has paid

(1) Perry on Trusts, Sec. 231.
(2) Jones on Liens, Sec. 1105.

prior to a conveyance, and for the performance by the vendor of his obligation, exists to the same extent against the same classes of persons and is governed by the same rules as the corresponding lien of the grantor. The lien only arises, of course, when the vendor is in some default for not completing the contract according to its terms and the vendee is not in default so as to prevent him from recovering the purchase money."[3]

Fetter in his work on Equity, says:

"A vendee under a land contract who prematurely pays the purchase money, or any part of it, has a lien therefor on the land contracted to be sold, if, by reason of the vendor's fault, the contract is not performed. This lien is in all respects analogous to the vendor's lien for the unpaid purchase money. The legal title remains in the vendor, but the vendee has a lien on the land as security for the purchase money he has paid. Such a lien generally arises where a deposit has been made by the purchaser and the title turns out to be defective, or for some other reason the sale is not completed."[4]

"If the contract fails, or is avoided because of the inability or refusal of the vendor to make proper title, or because of fraud or misrepresentation in the contract, or for any other reason chargeable to the vendor, and which is not due to the default of the vendee, he is given a lien upon the land as security for the repayment of what he has paid in performance of the contract."[5]

Fry in his work on "Specific Performance" says:

"The payment of the deposit, or part payment to the vendor or his agent, creates a lien for the amount paid on the vendor's interest in the land, or other property, the subject matter of the contract. * * * The purchaser has a lien for his deposit not only when the contract goes off for want of title, but also when it is rescinded under a condition entitling the purchaser or vendor to rescind. * * * This lien in the case of a purchaser extends to all installments of the purchase money."[6]

(3) Pomeroy's Equity Jurispudence, 3rd ed. Sec. 1263.
(4) Fetter on Equity, Sec. 156.
(5) 29 Am. & Eng. Ency. of Law, 2nd ed., 730.
(6) Fry on Specific Performance, Secs. 1479, 1482.

Washburn in his work on real property says:

"Corresponding to the lien which a vendor has for his purchase money is the lien which equity gives the vendee on the land to the amount advanced toward the purchase money, until the vendor shall have made a title to the same. * * * And where the contract is executory, as fast as the purchase money is paid in, it is a part performance of such contract, and to that extent the payment of the money, in equity transfers to the purchaser the ownership of a corresponding portion of the estate."[7]

In some states, as in California, Idaho, Montana, North Dakota and perhaps others, liens of this character are recognized by statute.

The statute of California provides: "One who pays to the owner any part of the price of the real property under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration."[8]

The statutory provisions of Idaho, Montana and North Dakota are in substantially the same language.

It is interesting to briefly consider the history and development of this doctrine. It would perhaps occur to most lawyers that this proposition or rule asserted with so much assurance by the text writers as an old established doctrine of equity was as ancient as the right of vendor to a lien on land for purchase money, unless they had investigated the subject. As a matter of history, the first time there is any declaration from any court that a vendee is entitled to a lien against land the subject of contract, appears to be in the case of Burgess v. Wheate, by the Master of the Rolls, in the year 1758,[9] in the reign of George II. In the case referred to it seems the exact question was not decided.

It seems that the question came squarely before the English court in the year 1855,

(7) 2 Washburn on Real Property, Sec. 1039.
(8) Calif. Civil Code, Sec. 3050.
(9) 1 W. Black, 121.

in the case of Wythes v. Lee.[10] And in 1864, the question was again before the court in the case of Rose v. Watson;[11] and in that case the question was again discussed and the rule announced on the theory that every payment made by the vendee is a pro tanto performance of the contract on his part, and in equity transfers to him a corresponding portion of the estate. It would thus seem to be true, that when Sugden wrote his valuable treatise on Vendors and Purchasers, in 1805, he had no precedent for his announcement above set out, other than what was said in the case of Burgess v. White, supra, and which did not definitely declare the rule. In the United States, so far as the writer has been able ascertain, the earliest case announcing the rule is the case of Bibb v. Prather, a Kentucky case, decided in 1809. In that case it was declared to be an undeniable principle of equity, that where one has paid his money for land, in the sale of which such fraud has been committed upon him as to render it necessary to have the contract rescinded, he may nevertheless hold the land, subject to reinbursement of the money he has paid on the contract.[12]

Such a lien was also allowed on land sold in Tennessee, in 1813, and the vendor was unable to convey clear title.[12] The vendee was declared to be entitled to a lien for purchase money advanced on land under an executory contract in two other early cases decided in Kentucky, and one case decided in Alabama and one in Michigan, prior to the declaration of the rule in England in 1855. It cannot be said, to be exact, that this rule originated in England, other than what was said by Sugden in his first edition of his treatise on Vendors and Purchasers, which as we have seen, was published in 1805.

Almost all of the cases which discuss the principles upon which a vendee's lien are founded cite the case of Rose v. Watson, *supra*. In that case Lord Cranworth observed: "There can be no doubt, I apprehend, that when a purchaser has paid his purchase money, though he has got no conveyance, the vendor becomes a trustee for him of the legal estate, and he is, in equity, considered as the owner of the estate. When, instead of paying the whole of his purchase money, he pays a part of it, it would seem to follow, as a necessary corollary, that to the extent to which he has paid his purchase money, to that extent the vendor is a trustee for him; in other words, that he acquires a lien, exactly in the same way if upon the payment of part of the purchase money the vendor had executed a mortage to him of the estate to that extent. It seems to me that that is founded upon such solid and substantial justice, that if it is true that there is no decision affirming that principle, I rejoice that now, in your lordship's house, we are able to lay down a rule that may conclusively guide such questions for the future. I think, however, that there are some authorities which have been pointed out which have established that rule in principle, if not in terms. But I think it is unimportant to go into that, because it is now established, and will from henceforth be established, as a very sound principle founded on solid justice." The decision in Rose v. Watson was rendered in 1864. It would seem that nothing more is required to show that the rule is of modern origin.

In the case of Everett v. Mansfield, U. S. Circuit Court of Appeals;[13] which involved the question of a purchaser's lien, the court, Putnam J., rendering the decision of the court says: "The general rule applicable to this case is stated in Fry on Specific Performance, as follows: (quoting the same proposition as herein given), and also quotes the statement of Sugden in his work on Vendors and Purchasers, as above quoted, and then proceeds. "The right to the lien was first clearly stated in 1855, in

(10) 3 Drew. 396.
(11) 10 H. L. Cases, 672.
(12) 1 Bibb, 313.
(12) Newman v. Maclin, 5 Hayw. 241.
(13) 148 Fed. Rep. 374.

Wythes v. Lee, *supra*, by Vice-Chancellor Kindersley, although the principles which establish it, as said there and subsequently elsewhere, are old in the equity law. They were fully stated in 1864 in Rose v. Watson, *supra*, and they are based on the well-known fundamental rule that in equity what is agreed to be done is regarded as done; so that from the time that a contract is made for the purchase of real estate, the vendor is often held as, in a certain sense, a trustee for the purchaser, and the purchaser is regarded in a certain sense, as the real owner of the land, so that each, on the ordinary equitable rules, has a lien for his protection.

The doctrine is now held to be the rule and is adopted in the states of Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Michigan, Mississippi, Missouri, New York, New Jersey, North Carolina, Tennessee, Texas, and Wisconsin, and is statutory in those states before mentioned.

In some jurisdictions, the right of a vendor to a lien has been expressly disavowed[14] and of course, by a parity of reasoning, would disavow the right of the vendee to a lien.

The doctrine announced by the United States Supreme Court, while not expressly holding that the vendee has a lien for the purchase money paid by him on contract for the sale of the land, does hold in the case of Jennison v. Leonard,[15] that an equitable interest vests in the vendee to the extent of the payments made by him while legal title remains in the vendor. In the case referred to the Court says: "This was one of the sales of real estate by contract, so common in this country, in which the title remains in the vendor and the possession passes to the vendee. The legal title remains in the vendor, while an equitable interest vests in the vendee to the extent of the payments made by him. As his payments increase his equitable interest increases, and when the contract is fully paid, the entire title is equitably vested in him, and he may compel a conveyance of the legal title by the vendor, his heirs or his assigns. The vendor is a trustee of the legal title for the vendee to the extent of his payment. The result of this state of things is quite unlike that of conveyance, subject to a condition subsequent which is broken and when re-entry or a claim of title for condition broken is necessary to enable the vendor to restore to himself the title to the estate." This ruling is in line with that in Rose v. Watson, *supra*.

Although the existence of the doctrine is well established, the reasons assigned by the courts for its existence are not the same.

Ordinarily the fact that different courts assign different reasons for the same result is interesting, but usually is merely academic, but not always.

No truer precept was ever laid down in so few words as the well-known assertion by Lord Coke, Chief Justice of the King's bench, (Coke Inst.) more than three hundred years ago: "Reason is the life of the law, and he that knoweth not the reason of the law, knoweth not the law." Any enlargement on that proposition to lawyers, is as I take it, a mere waste of words.

In the comparatively recent case of Whitebread v. Watt,[16] it is said: "The lien which a purchaser has for his deposit is not the result of any express contract. It is a right which may be said to have been invented for the purpose of doing justice. It is a fiction of a kind which is sometimes resorted to at law as well as equity."

In the case of Wickman v. Robinson,[17] the court in discussing a purchaser's right to a lien for purchase money paid, said: "We can see no reason why such a lien should not exist. All the reasoning by which

(14) Massacheusetts, (Ahernd v. Odiorne, 118, Mass., 261); Maine, (Phillbrook v. Delano, 29 Me., 410); Kansas, (13 Kan. 245); Pennsylvania, (49 Pa., 9); Rhode Island, (10, R. I. 334); New Hampshire, (44 N. H., 102); and Connecticut, (17 Conn., 579); and possibly others.

(15) 21 Wall. 302, L. ed. 539.

(16) 1 Ch. 835, England.

(17) 14 Wisc. 493.

the vendor's equitable lien for the purchase money after conveyance is established is applicable in support of the vendee's lien after payment, or part payment, and before conveyance. It is difficult to imagine upon what principle a court of equity could enforce the one and deny the other."

In the case of Elterman v. Hyman,[18] the court says: "Whether the foundation of the lien is natural equity, imputed intention, partial ownership, the implication of a trust, or a blending of some of those sources, the authorities, in those jurisdictions which give a lien to the vendor, almost without exception are clear that one exists in favor of the vendee. The lien springs from the trust under which the vendor, as the legal owner, holds the land for the vendee, the equitable owner. Part payment creates partial ownership, and the vendee has an interest in the land itself to extent of the payments made thereon."

In the case of Everett v. Mansfield, *supra*, the court says that the basis of the rule is the well-known equity maxim "Equity looks upon that as done which ought to be done."

In the case of Stultz v. Brown,[19] 2 Am. St. Rep. 190, the court says: "The lien is the creation of courts of equity. Where there is a right there is a remedy. The equities of a vendee who pays money on a contract of sale are as strong as those of a vendor who does not receive full payment for the land he sells. The principle which applies in such cases is closely analogous to the principle of subrogation."

In some of the cases the right of the vendee to a lien is held to be a counterpart of the vendor's lien, and that the principle is one of the ancient doctrines of equity jurisprudence.

With all due respect to the opinions of the courts so holding this cannot be true. The history of the equitable lien in favor of a vendor is as ancient as any other doctrine of equity. Judge Story says: "The true origin of the doctrine may with high probability be ascribed to the Roman law, from which it was imported into the Equity Jurisprudence of England.[20] By the Roman law the vendor of property sold had a privilege or right of priority of payment in the nature of a lien on the property for the price for which it was sold, not only against the vendee and his representatives, but against his creditors and also against subsequent purchasers from him. For it was a rule of that law that although the sale passed the title and domination in the thing sold, yet it also implied a condition that the vendee should not be master of the thing sold, unless he had paid the price or had otherwise satisfied the vendor in respect thereof, or a personal credit had been given to him without satisfaction."[21]

That the text quoted is well sustained is shown by reference to the Institutes of Justinian:[22] "Venditae vero res et tradiatae, non aliter emptori acquirunter, quam si is venditori pretium solverit, vel alio modo ei satisfecerit; veluti expromissore aut pignore dato. Sed si is qui vendidit fidem emptoris sequutus fue rit, dicendum est statim rem emptoris fieri." Which is rendered, "But things sold and delivered are not acquired by the buyer until he has paid the seller the price, or satisfied him in some way or other, as by procuring some one to the security, or by giving a pledge."

As is well known to the profession, the Institutes of Justinian were compiled and promulgated by that emperor, or by him given the force of law, in the year 533 A. D. And while this would seem to be sufficient to establish the ancient origin of the doctrine of a vendor's lien, the same section of the Institutes, contains the further indisputable evidence that this principle is adopted from the law of the

(18) 192 New York, 113.
(19) 112, Indiana, 370.
(20) Citing Mackreth v. Symmons, 15 Ves. 337.
(21) Story's Equity, Sec. 1221.
(22) Book 2, title, 1, Sec. 41.

"Twelve Tables." The remainder of the section proceeds, "Quod cavetur quid emetiam lege duodecim tabularum, tamen recte dicitur et jure gentium, id est, jure naturali, id effici." Which is rendered, "And although this is provided by a law of the Twelve Tables, yet it may be rightly said to spring from the law of nations, that is, the law of nature."[23] The law of the Twelve Tables was adopted by Rome in the year 452, B. C. The 6th Table provided among other things, that the property in a thing sold, although possession was delivered, should not pass to the buyer until the vendor was satisfied.[24]

So it may well be said that the doctrine of a vendor's lien goes back to the beginning of organized government, and arises out of the jure naturali, the law of nature, and as often expressed in the books "natural justice". But the investigator or searcher will look in vain for any mention of the right of the buyer to have a lien for the purchase money paid by him. When it is considered that the first recorded instance of such a right was in the year 1758, and the first adjudication of that doctrine in the United States was early in the nineteenth century, and the first adjudication of the doctrine in England was in the year 1855, it may well be called an invention of the courts of equity to do justice. Compared with the antiquity and history of the equitable lien of the vendor, that of the vendee is as of yesterday. Being a doctrine of recent growth, it may well exercise the ingenuity of the courts to find a reason for its existence. Justice Story says that a vendor's lien is an implied trust, and is treated as such in his great work on Equity, and that the right does not arise upon contract; it may well be that the same reason is the basis of a vendee's lien.

O. C. BROWN.

Indianola, Iowa.

(23) See Sander's Justinian, 182.
(24) 1 Kent's Com. 522, and Holmes' note. Hammond's Justinian, 9.

AUTOMOBILES—LIABILITY OF OWNER

JONES v. COOK.

111 S. E. 828.

Supreme Court of Appeals of West Virginia, April 11, 1922.

Where a person allows his stepdaughter, who is a member of his family, to drive an automobile which he maintains for the comfort, convenience, pleasure, entertainment and recreation of his family, whereby the stepdaughter negligently injuries the property of a third party, the owner is liable; the stepdaughter, while so driving, acting in the furtherance of the owner's purpose.

Meredith, J. On October 24, 1919, Ivol Hickman, a stepdaughter of defendant, and who was then a member of his family and under 21 years of age, was driving defendant's automobile in returning from a football game in Parkersburg. She was the only member of defendant's family in the automobile, but had with her a number of her young friends. At the intersection of Covert and Sixteenth streets she permitted defendant's automobile to run into and practically demolish plaintiff's automobile. Plaintiff seeks recovery of damages. As the record now stands, plaintiff clearly showed that she was negligent and that plaintiff was not. Plaintiff made a clear case against her, but she is not made a defendant. It was also proved that the car she drove belonged to defendant. Defendant introduced no evidence, but at the conclusion of plaintiff's evidence, defendant moved the court to exclude it and to direct a verdict for defendant, and this was done.

Plaintiff's injury, the driver's negligence, and defendant's ownership of the automobile were proved. This made a prima facie case.

"When the plaintiff has suffered injury from the negligent management of a vehicle, such as a boat, car, or carriage, it is sufficient prima facie evidence that the negligence was imputable to the defendant, to show that he was the owner of the thing, without proving affirmatively that the person in charge was the defendant's servant. It lies with the defendant to show that the person in charge was not his servant, leaving him to show, if he can, that the property was not under his control at the time, and that the accident was occasioned by the fault of a stranger, an independent contractor, or other person." Shearman & Redfield, Law of Negligence (6th Ed.) § 158.

In the case of Norris v. Kohler, 41 N. Y. 42, it was held that, in an action for causing death in the streets of a city, charged to have been due to the negligence of the defendant's ser-

vants, evidence that the fatal injury was occasioned by a runaway span of horses and wagon, owned by the defendant, was sufficient to authorize a jury to find persons in charge of such horses and wagon to be his servants. In discussing this phase of the evidence, the Court says:

"The property being proved to belong to the defendant, it is urged that a presumption arises that it was in use for his benefit, and on his own account. This argument, I think, is a sound one. The ownership of personal property draws to it the possession. The owner is entitled to have and to keep possession, and no other person can justly obtain possession until some act of authority from the owner is proved. Ownership implies possession, and possession is in subordination to title. No proof was given in the present case, separating the owner from the possession, and the presumption of law is that the wagon and horses of the defendant were in use in his service and on his account."

In Schaefer v. Osterbrink, 67 Wis. 495, 30 N. W. 922, 58 Am. Rep. 875, it was held that:

"In an action against a father and son jointly to recover for the negligence of the son, a minor, where it is charged that, at the time the plaintiff was injured, the son was acting as the servant of the father it is not error to charge that 'the presumption is that a minor child, living with his father, and using his team and conveyance in and about the business of such father, is acting in his behalf and upon his direction, until the contrary is made to appear by the evidence; this fact established, the burden to show that his son was not his servant is imposed upon the father'—where the Court, in other parts of its charge, has submitted to the jury the question whether or not, at the time the negligence was committed, the son was in fact the servant of his father."

See, also, Svenson v. Steamship Co., 57 N. Y. 108; McCoun v. Railroad Co., 66 Barb. (N. Y.) 338; Lovingston v. Baucheus, 34 Ill. App. 544; 6 Thompson, Commentaries on Negligence, § 7659; 1 Cooley, Torts (3d Ed.) p. 181.

Whether the driver of defendant's automobile, at the time of the accident, was in his employment was peculiarly within his knowledge, and her negligence in its use and his ownership of it being shown, the jury could very properly have found that the driver was his servant; the facts shown created a presumption that she was in his service and acting on his account, and the case should have been submitted to the jury.

But there arises a more serious question on the record. It can fairly be inferred from the evidence that defendant's automobile was a "big closed" Hudson "family car"; that it was acquired by him for the use and pleasure of his family, including his stepdaughter; that she was accustomed to drive it with his knowledge and consent, not only generally, but also with his permission on this particular occasion; and that on this drive she was using it for her own pleasure and that of her friends, one of the very purposes for which it was acquired and kept. Therefore, the question is whether the defendant is liable for an accident occurring by reason of the proved negligence of his stepdaughter, while driving his automobile acquired for the purposes mentioned, by his permission, and for her pleasure.

1. To this question courts of high order make directly opposite answers. All agree, however, that defendant's liability depends upon whether the driver of the automobile was his servant and engaged upon defendant's business at the time the negligent act occurred. Kayser v. Van Nest, 125 Minn. 277, 146 N. W. 1091, 51 L. R. A. (N. S.) 970; Hartley v. Miller, 165 Mich. 115, 130 N. W. 336, 33 L. R. A. (N. S.) 81; McNeal v. McKain, 33 Okl. 449, 126 Pac. 742, 41 L. R. A. (N. S.) 775; Birch v. Abercrombie, 74 Wash. 486, 133 Pac. 1020, 50 L. R. A. (N. S.) 59; Griffin v. Russell, 144 Ga. 275, 87 S. E. 10, L. R. A. 1916F, 216, Ann. Cas. 1917D, 994; Van Blaricom v. Dodgson, 220 N. Y. 111, 115 N. E. 443, L. R. A. 1917F, 363; Doran v. Thomsen, 76 N. J. Law, 754, 71 Atl. 296, 19 L. R. A. (N. S.) 335, 131 Am. St. Rep. 677; Missell v. Hayes, 86 N. J. Law, 348, 91 Atl. 322; King v. Smythe, 140 Tenn. 217, 204 S. W. 296, L. R. A. 1918F, 293; Arkin v. Page, 287 Ill. 420, 123 N. E 30, 5 A. L. R. 216.

2. The defendant could not be held liable for the negligent wrong of his stepdaughter merely because of the family relation between them. Blair v. Broadwater, 121 Va. 301, 93 S. E. 632, L. R. A. 1918A, 1011; Cohen v. Meador, 119 Va. 429, 89 S. E. 876; Smith v. Jordan, 211 Mass. 269, 97 N. E. 761; Mirick v. Suchy, 74 Kan. 715, 87 Pac. 1141, 11 Ann. Cas. 366.

3. An automobile is not per se such a danperous agency that its owner is liable for injuries on a highway inflicted, while being driven by another, irrespective of the relationship of master and servant, or of principal and agent. On this proposition we believe there is little disagreement, though we have no doubt that the dangerous character of the automobile has had a very important bearing on the decisions.

4. It necessarily follows that, unless the driver of defendant's car at the time of the injury was in his service, the defendant is not liable. The authorities cannot be reconciled. In the leading case of Doran v. Thomsen, supra, a case very similar to the case at bar, the Court held that the owner was not

liable. In that case the daughter who was the driver, was the only member of defendant's family in the automobile. In the later case of Missell v. Hayes, supra, a son of the defendant was driving the automobile, and with him at the time of the accident were the defendant's wife and daughter, and two guests. The Court differentiates that case from the case of Doran v. Thomsen, in that in the Missell case there were members of defendant's family in the automobile other than the driver, and held that it was a question for the jury to determine whether the son, while driving the automobile, was the father's servant on the father's business, saying:

"It was within the scope of the father's business to furnish his wife and daughter, who were living with him as members of his immediate family, with outdoor recreation just the same as it was his business to furnish them with food and clothing, or to minister to their health in other ways."

—and affirmed a judgment in favor of the plaintiff. This view is sustained in the following cases: Denison v. McNorton, 228 Fed. 401, 142 C. C. A. 631; Lemke v. Ady (Iowa, 1916) 159 N W. 1011; Collinson v. Cutter, 186 Iowa, 276, 170 N. W. 420; Uphoff v. McCormick, 139 Minn. 392, 166 N. W. 788; Stowe v. Morris, 147 Ky. 386, 144 S. W. 52, 39 L. R. A. (N. S.) 224; McNeal v. McKain, 33 Okl. 449, 126 Pac. 742, 41, L. R. A. (N. S.) 775.

We see no possible ground of difference concerning the owner's liability, whether there be but one member of the family or all members of the family in the automobile at the time of the negligent injury. If the father makes it his business or affair to furnish members of his family with an automobile for family use, and he maintains it for that purpose, just the same as it is his business to furnish them with food and clothing or to minister to their health in other ways, then he is in the furtherance of that business just as surely, when a single member of the family is driving it for his own pleasure and convenience, as if all the family were riding in it. Counsel for defendant say that defendant is not liable for the negligence of the stepdaughter in the operation of the automobile in the present case, because it was none of his affair; but we hold that he made it his affair by maintaining the automobile for the very purpose for which she was using it at the time of the injury. He owned the machine and had the right to say where, how, and by whom it might be used, and impliedly, if not expressly, authorized the use to which it was put when the accident occurred. The doctrine of agency is not confined to merely commercial business transactions, but extends to cases where the father maintains an automobile for family use, with a general authority, expressed or implied, that it may be used for the comfort, convenience, pleasure and entertainment or outdoor recreation of members of the owner's family. This view accords with the great weight of authority and is sustained by Kayser v. Van Nest; Stowe v. Morris; McNeal v. McKain; Birch v. Abercrombie; Smith v. Jordan; Griffin v. Russell; Denison v. McNorton—all cited supra. Also, Crittenden v. Murphy, 36 Cal. App. 803, 173 Pac. 595; Tyree v. Tudor, 181 N. C. 214, 106 S. E. 675; Davis v. Littlefield, 97 S C. 171, 81 S. E. 487; Johnson v. Smith, 143 Minn. 350, 173 N. W. 675; Benton v. Regeser, 20 Ariz. 273, 179 Pac. 966; Boes v. Howell, 24 N. M. 142, 173 Pac. 966, L. R. A. 1918F, 288.

This view was also applied in cases of horse-drawn vehicles, decided before the introduction of the automobile. Schaefer v. Osterbrink, 67 Wis. 495, 30 N. W. 922, 58 Am. Rep. 875; Lashbrook v. Patten, 1 Duv. (Ky.) 316. It is not a new graft on the law of agency. It is merely applying old principles to new conditions. There are practical considerations involved to which courts cannot close their eyes. This doctrine puts the financial responsibility of the owner behind the automobile while it is being used by a member of the family (who is likely to be financially irresponsible), in furtherance of the business and purposes for which it is maintained. The Supreme Court of Tennessee. in the case of King v. Smythe, 140 Tenn. 217, 204 S. W. 296, L. R. A. 1918F, 293, has tersely stated the doctrine and we quote with approval from the opinion in that case:

"If a father purchases an automobile for the pleasure and entertainment of his family, and, as Dr. Smythe did, gives his adult son, who is a member of his family, permission to use it for pleasure, except when needed by the father, it would seem perfectly clear that the son is in the furtherance of this purpose of the father while driving the car for his own pleasure. It is immaterial whether this purpose of the father be called his business or not. The law of agency is not confined to business transactions. It is true that an automobile is not a dangerous instrumentality so as to make the owner liable, as in the case of a wild animal loose on the streets; but, as a matter of practical justice to those who are injured, we cannot close our eyes to the fact that an automobile possesses excessive weight, that it is capable of running at a rapid rate of speed, and when moving rapidly upon the streets of a populous city, it is dangerous to life and limb and must be operated with care. If an instrumentality of this kind is placed in the hands of his family by a father, for the family's pleasure, comfort and entertainment, the dic-

tates of natural justice should require that the owner should be responsibile for its negligent operation, because, only by doing so, as a general rule, can substantial justice be attained. A judgment for damages against an infant daughter or an infant son, or a son without support and without property, who is living as a member of the family, would be an empty form. The father, as owner of the automobile and as head of the family, can prescribe the conditions upon which it may be run upon the roads and streets, or he can forbid its use altogether. He must know the nature of the instrument and the probability that its negligent operation will produce injury and damage to others. We think the practical administration of justice between the parties is more the duty of the Court than the preservation of some esoteric theory concerning the law of principal and agent. If owners of automobiles are made to understand that they will be held liable for injury to person and property, occasioned by their negligent operation by infants or others who are financially irresponsible, they will doubtless exercise a greater degree of care in selecting those who are permitted to go upon the public streets with such dangerous instrumentalities. An automobile cannot be compared with golf sticks and other small articles bought for the pleasure of the family. They are not used on public highways, and are not of the same nature of automobiles."

For the foregoing reasons, we reverse the judgment, set aside the verdict, and grant the plaintiff a new trial.

Poffenbarger, P. (dissenting). Although sustained by an apparent weight of authority, this decision, in my opinion, contravenes fundametal principles of the laws of agency and master and servant and the rule respondeat superior. In running an automobile for his or her own pleasure, a son, daughter, or other member of a family cannot legally be the servant or agent of another person, even though such other person be the head of the family and owner of the car. Action by one person for his own benefit or pleasure is legally incompatible with service or agency for another, in the performance of the act. Service necessarily implies the doing of something for another, not for the actor. It involves two persons, the master and the actor. Agency generally involves three, the actor, the person for whom he acts, and the person affected by the act authoritatively done. Both relations have their legal limitations. One acting for himself alone can be neither servant nor agent of another.

That the head of the family or some other member of it owns and keeps the car for the use of the family and permits all members thereof to operate it at their pleasure, or that he purchased and maintains it for such purpose and one member thereof occasionally or generally drives it with others riding in it, cannot change the principles of law. When he alone is driving it and riding in it, for his own pleasure or about his own business, he cannot be serving or acting for anybody but himself. If, while he drives it, the car carries other members of the family, he may be. How he obtained the use of some other person's car, or the motive of such other person, in its purchase, ownership or maintenance, is entirely too remote to affect the question of agency or service. These circumstances and the close relationship of the parties add to and emphasize the probative force and effect of evidence of service or agency, but they are not of themselves such evidence. The same observation is true of the relation of master and servant. If the driver is the chauffeur of the owner or other employe in charge of his car, there may be a rebuttable presumption that he was using it in his master's business, but nothing more. On proof that he was not, the relation may re-enforce evidence that he was, but beyond that, it signifies nothing. Such is the uniform holding in cases in which close relationship of parties is invoked, as evidence of fraud.

In Goff v. Clarksburg Dairy Co., 86 W. Va. 237, 103 S. E. 58, liability was not predicated on the mere relation of the parties to each other. It was put upon the ground of evidence of use of the car, at the time, within the scope of the servant's employment as defined by an informal contract and the mode of its execution. In agency, one person must be doing something for another, not merely for himself. Mechem, Agency, § 2; Clark & Skyles, Agency, § 1; Bouv. Law Dict. title "Agent." The same principle governs in master and servant. If the owner of the car has a purpose in allowing a member of his family to use it for his own purposes, the purpose of the former is necessarily merged in that of the latter. It is merely subordinate when the two purposes coincide. One must be dominant and, when the car is running, the dominant one is that of the driver. The car serves his purpose merely with the consent of the owner, just as much as if it had been loaned or hired to any stranger. In view of these fundamental principles of law, several of the cases referred to in the majority opinion would deny right of recovery upon the facts disclosed here, and, in my opinion, they rest upon solid legal ground.

New laws should be made by the Legislatures, not the courts.

Note.—Liability Under Family Automobile Doctrine.—The cases on this subject are so hopelessly irreconcilable that we will do nothing more than cite the two distinct separate lines of cases holding pro and con, omitting case so cited in the reported case. One line of cases holds that where the head of a family keeps an automobile for the use and pleasure of his family, he is liable for its negligent operation by any member of the family permitted to use the car. Baldwin v. Parsons, Ia., 186 N. W. 665; Bourne v. Whitman, 209 Mass., 155, 95 N. E. 404; Erlick v. Heis, Ala., 69 So. 530; Guigonon v. Campbell, 80 Wash., 543, 141 Pac. 1031; Hutchins v. Haffner, 167 Pac. 966; Jensen v. Fischer, 134 Minn., 366, 159 N. W. 827; Johnson v. Evans, Minn., 170 N. W. 220; King v. Smythe, 140 Tenn., 217, 204 S. W. 296; Lynde v. Browning, 2 Tenn., C. C. A. 262; Marshall v. Taylor, 168 Mo. App. 240, 153 S. W. 527; Moon v. Matthews, 227 Pa., 448, 76 Atl. 219; Plasch v. Fass, Minn., 174 N. W. 438; Ploetz v. Holtz, 124 Minn., 169, 144 N. W. 745; Switzer v. Sherwood, 80 Wash., 19, 141 Pac, 181; Ulman v. Lindeman, N. D., 176 N. W. 25; Winn v. Haliday, 109 Miss., 691, 69 So. 685.

The other line of cases holds that these facts are not sufficient to fasten responsibility upon the owner. Arkin v. Page, 287 Ill., 420, 123 N. E. 30; Blair v. Broadwater, Va., 93 S. E. 632; Brennen v. Goldstein, 171 N. Y. Supp. 579; Cannon v. Bastian, Del., 116 Atl. 209; Cohen v. Meador, 119 Va., 429, 89 S. E. 876; Conestoga Traction Co. v. Haldy, 22 Pa. Dist. 124; Doran v. Thomsen, 76 N. J. L. 754, 71 Atl. 296; Farthing v. Strouse, 158 N. Y. Supp. 841, 172 App. Div. 523; Hays v. Hogan, Mo., 200 S. W. 286; Bolman v. Bullene, 200 S. W. 1086; Heissenbuttel v. Meagher, 147 N. Y. Supp. 1087, 162 App. Div. 752; Linville v. Nissen, 162 N. C. 95, 77 S. E. 1096; Loehr v. Abell, 174 Mich., 590, 140 N. W. 926; McFarlane v. Winters, 47 Utah 598, 155 Pac. 437, L. R. A. 1916 D, 618; Mast v. Hirsh, 199 Mo. App. 1, 202 S. W. 275; Parker v. Wilson, 179 Ala., 361, 60 So. 150; Pratt v. Cloutier, Me., 110 Atl. 353; Roberts v. Schanz, 144 N. Y. Supp. 824, 83 Misc. 139; Schumer v. Register, 12 Ga. App. 743, 78 S. E. 731; Smith v. Jourdan, 211 Mass., 269, 97 N. E. 761; Knight v. Cossitt, 102 Kan., 764, 172 Pac. 533; Smith v. Weaver, Ind., 124 N. E. 503; Tanzer v. Read, 145 N. Y. Supp. 708, 160 App. Div. 443; Watkins v. Clark, 103 Kan. 629, 176 Pac. 131; Wilson v. Polk, N. C., 95 S. E. 849; Woods v. Clements, 113 Miss., 720, 7[illegible] So. 422; Zeeb v. Bahnmaier, 103 Kan. 599, 176 Pac. 326.

ITEMS OF PROFESSIONAL INTEREST

QUESTIONS ON PROFESSIONAL ETHICS AND REPLIES BY THE CHICAGO BAR ASSOCIATION.

QUESTION 1.

(a) Attorney K is under annual retainer from the M Company. This latter concern sells certain property to the S Company, retaining in itself the right to sue for that portion of continuous injury to the property occuring up to the date of sale but not thereafter. Another concern called B Company is desirous of suing the S Company in another and expects it to file a counterclaim based upon the injuries to the property purchased from the M Company after its purchase thereof. Can K Company accept a retainer from the B Company to prosecute this litigation? Assuming that he does so accept it without any knowledge of the M Company's former title to the property, what if anything should he do on discovering the situation.

(b) Is it incumbent upon the B Company to disclose to K the former ownership of the M Company in the property which may come in as a counterclaim before retaining K?

ANSWER.

(a) The Committee on Ethics has given your proposition careful consideration and is unanimously of the opinion that K should not represent B in the litigation in question, and if he should accept the employment without knowledge of the M Company's former title to the property in question, he should withdraw from the case and refuse longer to represent B in the matter in question. The Committee is of the opinion that in attempting to defeat the counterclaim of S Company, K would necessarily be required to take a position antagonistic to the M Company, so that K would be in a position of representing conflicting interests.

(b) Your second question does not seem to involve any rule of professional ethics. It involves only a question of fair dealing on the part of B Company.

QUESTION 2.

Inquiry was made of the Committee whether the practice outlined in the following office rule promulgated by a commercial attorney, engaged in a large forwarding business, is deemed proper:

As to Advance Costs.—The two-thirds and one-third relationship with attorneys is not to

be followed in the matter of advance fees for suit. Ahe relationship would be rather that of contractors and sub-contractors, if we may make such an analogy as to an attorney; that is, we are the contractors and when suit is required, we contract with our client to send us such sum of money as we require for the purpose of bringing suit—then we contract with the attorney to commence suit upon the best terms, and send him the amount that he requires for commencing suit, retaining the balance in our hands for fees.

As to Suit Fees.—These suit fees are not necessarily the amount that the attorney charges for suit fee, of which one-third goes to us, but the suit fee proposition should be treated the same as the advance costs; that is, we regard ourselves as the attorney in charge and make such charge as we think is proper and fitting in such case,—and the attorney gets whatever he charges and we retain the rest of the suit fee that we charge.

ANSWER.

The practice indicated by these office rules does not commend itself to us. The law is a "profession" and not to quote the Code of Professional Ethics, "a mere money getting trade."

Attorney's fees should not be employed to cover for other charges; they should be commensurate with the services rendered, and should not be collected for work done unless in fact paid.

The rules referred to have an unprofessional air about them. Under them the attorney retained appears as a mere hireling and the relationship does not seem wholly professional. There should be no trafficing in fees and the arrangement regarding the payment for legal services should, at all times, be kept on a professional basis.

HUMOR OF THE LAW

Demur!—A lawyer took into his office a student to read law. The lawyer was to receive $500 therefor, $250 being paid and the balance to become due when the student, after being admitted to practice, should win his first case. In course of time the student was admitted to the bar, but was retained in no cases, and the lawyer, after waiting much more than a reasonable length of time brought suit for the balance.

The student contended that if he won he did not have to pay—res adjudicata, and that if he lost, then having not yet won his first case, the balance was not due.

The lawyer contended that if he (the lawyer) won he collected his balance by judgment of the Court, and if he lost then the student had won his first case, and must pay, so that he won in either case.

Dr. J. M. Buckley, the Methodist divine, was asked one day to conduct an "experience meeting" at a colored church in the South.

A colored woman arose and bore witness to the preciousness of her religion as light-burner and comfort-giver.

"That's good, sister!" commented Dr. Buckley. "But how about the practical side? Does your religion make you strive to prepare your husband a good dinner? Does it make you look after him in every way?"

Just then Dr. Buckley felt a yank at his coat-tails by the colored preacher, who whispered ardently: "Press dem questions, doctor; press dem questions. Dat's my wife!"

IN MEMORIAM.

John Doe is dead, the good old man
  Who's stood before the bar
A criminal since time began,
  Wherever courtrooms are.
No jot of reverence or awe
  The rascal has displayed;
He's broken every single law
  That ever has been made.

Policemen, running down a crime,
  Have hunted high and low,
And always in the course of time
  Have brought in old John Doe.
He's burgled, pillaged, forged and slain,
  He's perjured, robbed and lied,
His yearning for ill-gotten gain
  Was never satisfied.

In every prison that there is,
  In dungeons deep and dark,
That ever busy hand of his
  Has carved its well-known mark.
No judge has ever served a term
  On benches here below,
Who's not, in accents clear and firm,
  Passed sentence on John Doe.

And now he's dead—for Mr. Taft,
  In one judicial breath,
Has swept this famous King of Graft
  To dim and dusty death.
The law for his time-honored name
  Has no official use.
And so he' dead, but just the same
  We'll miss him like the deuce.

—*James J. Montague in St. Louis Post-Dispatch.*

WEEKLY DIGEST.

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1. **Automobiles**—Liability of Owner.—It was not conclusive against plaintiff, whose automobile was damaged in a collision with defendant's automobile, that no collision would have taken place if defendant's chauffeur had promptly returned to the garage after performing an errand, instead of going to a dance, where he was on his way back to the garage at the time of the collision.—Cummings v. Republic Truck Co., Mass., 135 N. E. 134.

2.——Liability of Owner.—In an action for injuries to a motorcyclist, who was hit by an automobile driver by the alleged agent of defendant, the fact that defendant owned the automobile did no raise a presumption of law that the automobile was being used in defendant's business, and thereby shift the burden of this issue to defendant.—Freeman v. Dalton, N. C., 111 S. E. 863.

3.——License.—Laws 1919, p. 724, § 43, regulating operation of motor vehicles on public roads, having expressly exempted from registration and licensing federal-owned motor vehicles and traction engines, fire engines, etc., those not within the exception were without it, and city-owned vehicles other than expressly, mentioned were subject to the statute.—State v. Preston, Ore., 206 Pac. 304.

4.——Negligence.—Guest riding in a car with one front lamp burning held not guilty of negligence as a matter of law; qualification of irrstruction as to negligence of guest riding in car with one front lamp burning held not proper.—Judkins v. Sprague, Minn., 187 N. W. 705.

5.——Right of Way.—It is the duty of the driver of an automobile in approaching a crossing to have his car under full control and observe if vehicles are approaching on the intersecting streets, and if a car or truck is first at the crossing, it must be given an opportunity to cross the intersecting street, and due care used to avoid a collision, but under Act June 30, 1919, if both cars reach the crossing at the same time, the one approaching from the right is entitled to the right of way, and the other must, if necessary, stop and permit the one having the right of way to pass in safety.—Black v. Mark, Pa., 116 Atl. 656.

6.——Stop at "Street Car".—Under St. 1919, § 1636—49 (afterwards amended by Laws 1921, c. 537, by inserting after "street car" the words "proceeding in the same direction), an automobile was required to stop at crossing while street car was discharging or taking on passengers, though the vehicles were going in opposite directions.—Gilmore v. Orchard, Wis., 187 N. W. 1005.

7. **Bankruptcy**—Adjudication.—Neither a state, contracting with a corporation, nor a convict, which had pending a suit against the corporation for personal injuries, could successfully oppose an adjudication of bankruptcy under a voluntary petition, no matter what the motive for filing the petition, as the state could file its claim for damages against the estate, and the claim of the convict was not affected thereby.—State of Alabama v. Montevallo Mining Co., U. S. D. C., 278 Fed. 989.

8.——Commingling of Goods.—If, in the seizure of alleged concealed goods of a bankrupt, they were found commingled with other goods, such commingling did not deprive the court of the power to take steps to separate the goods, and the party commingling the goods cannot complain of the consequences following his conduct, and contend that the court had no jurisdiction to seize the property and require him to show the nature of his title and claim to the goods seized.—Cohen v. Hessel, U. S. C. C. A., 278 Fed. 929.

9. **Banks and Banking**—Draft.—Where seller's assignee forwarded draft on buyer to bank in Russia for collection, but thereafter resold goods to third party, it could not defend in action by buyer's assignee, who had paid draft to the correspondent, on the ground that the abnormal conditions in Russia had so paralyzed the judicary as to hinder defendant from forcing its correspondent to account for the money paid, where, after having forwarded draft to such bank, with knowledge of the conditions in Russia, it proceeded to draw checks on the account.—Gurdus v. Philadelphia Nat. Bank, Pa., 116 Atl. 672.

10. **Bills and Notes**—Holder in Due Course.—The maker of a promissory note cannot defeat it by showing that those who indorsed the payee's name in transferring it had no authority to make the indorsement where the payee receives the proceeds arising from the indorsement of the note, claims no further interest in it, and has knowledge of the action commenced by the indorsee to enforce its payment.—Lebo State Bank v. Booth, Kan., 206 Pac. 743.

11.——Indorsee.—Where a payee of a negotiable promissory note transfers it by indorsing thereon, "For value received I hereby guarantee payment of the within at maturity, or any time thereafter, with interest at the rate of 8 per cent. per annum until paid, waiving demand, notice of nonpayment and protest," the purchaser is an indorsee within the rule protecting an innocent purchaser of such paper in due course for value and before maturity against defenses good between the original parties."—Delk v. City Nat. Bank, Okla., 205 Pac. 753.

12. **Carriers of Goods**—Loss in Transit.—Limitation in bill of lading of time for giving notice, filing claim, and commencing suit for loss or damage, held bar to recovery, except for negligence through delay, or in loading or unloading, or in transit.—Gillette Safety Razor Co. v. Davis, U. S. C. C. A., 278 Fed. 864.

13.——Periods of Limitation.—Though Congress can suspend the statute of limitations as to personal debts without depriving a debtor of his property, because such period did not become a part of the contract, a suspension of the time within which an action could be brought under the terms of the contract would be a violation of Const. Amend. 5.—New York Cent. R. Co. v. Lazarus, U. S. C. C. A., 278 Fed. 900.

14 **Carriers of Passengers**—Humanitarian Rule.—Where an intending passenger stood waiting for a car at what she considered a safe distance from the track and so remained watching its approach without entering or attempting to enter on the track, and was struck by it,the carrier could not be held liable under the humanitarian rule.—Butler v. United Rys. Co. of St. Louis, Mo., 238 S. W. 1077.

15. —— Negligence. — The owner of a building operating therein passenger elevators is a common carrier of passengers, and as such, in the maintenance, inspection, and operation of its elevator and elevator shaft, owes the duty to use the utmost care and diligence for the safety of its passengers.—Smith v. Odd Fellows Bldg. Ass'n, Nev., 205 Pac. 796.

16. **Chattel Mortgages** — Constructive Notice. — Deed of trust on personal property immediately taken to county of buyer's residence not constructive notice to subsequent purchaser for valuable consideration unless recorded in such county.—McLarty v. Ashmore, Miss., 91 So. 421.

17. **Constitutional Law**—Police Power.—It is within the police power of the state to regulate the number of hours constituting a day's work for laborers employed by or on behalf of the state or any municipality, and to provide that the compensation therefor shall not be less than current wages for like labor, as provided in section 3757, Rev. Laws 1910, and it is not in violation of section 3, article 18, of the Constitution of Oklahoma, nor of section 10, article 1, of the federal Constitution, prohibiting the impairing of the obligations of contracts.—State v. Tibbetts, Okla., 205 Pac. 776.

18.——State Statute.—C. S. § 4697, providing that no suit for damages to crops resulting from the use of fertilizer shall be brought except after chemical analysis showing deficiency of ingredients, is not unreasonable and impossible of fulfilment, and does not impair the right of contract, but is constitutional, and a plaintiff not showing compliance therewith in an action for breach of warranty of fertilizer was properly non-suited.—Jones v. Union Guano Co., N. C., 111 S. E. 612.

19. **Eminent Domain**—Use of Water.—The condemnation of water for domestic purposes under Laws 1917, p. 448, § 4, is not excluded by implication by the use of the words "irrigation, mining, and manufacturing" in Const. art. 21, as the Legislature is not restricted from declaring other purposes to be also public in their nature.—State v. Superior Court, Wash., 205 Pac. 1051.

20. **Frauds**—Statute of Oral Contract.—Where an oral contract was entered into for the sale of land, and purchaser relied thereupon, went into possession, and did work by plowing and weeding and preparing the land for seeding, and seller refused to perform or execute the written contract contemplated, the statute did not prevent recovery of the value of the work done upon the land.—Muckle v. Hoffman, Wash., 205 Pac. 1043.

21.——Oral Contract.—To take an oral contract to convey land out of the statute, the contract must be clearly and definitely established by competent proof, and such possession as the terms of the contract and the situation of the parties require must have been taken; proof of exclusive possession not being necessary.—Mayo v. Mayo, Ill., 135 N. E. 90.

22. **Injunction** — Breach of Contract. — Where theatrical artists did not possess special merit or reputation, and their talents were not so unusual in any such degree as to make their loss a matter of serious consequence, injunction will not lie in a proceeding to restrain the violating of their contract.—Shubert Theatrical Co. v. Gallagher, N. Y., 193 N. Y. S. 401.

23. **Insurance**—By-Laws.—A fraternal insurance certificate, which provides it is subject to the provisions of the by-laws and constitution of the fraternal society, and the constitution and by-laws provide that, after the policy had been in force for more than 5 years immediately prior to the death of the insured, the same shall be incontestable for any reason except death by the hands of the beneficiary named therein, and if it is clearly shown that the same was not an accident. Held, that such provisions is a valid and binding provision, and precludes other defenses.—Sovereign Camp, W. O. W. v. O'Neil, Okla., 205 Pac. 755.

24.——Forfeiture.—A forfeiture arising from the sale of insured property without the insurer's written consent was waived where the soliciting agent, with knowledge of the conveyance, requested a mortgagee to whom any loss was payable as his interest might appear to meet him at the scene of the fire with the insured to adjust the loss, if the resulting inconvenience was sufficient to constitute a waiver, though the agent did not know that the company had not consented to the transfer, where the latter's secretary testified that he knew it had not consented; the company being chargeable with the knowledge of both its agent and the secretary.—Smeesters v. New Denmark Mut. Home Fire Ins. Co., Wis., 187 N. W. 986.

25. —— Guaranty. — In an action by the state superintendent of insurance as liquidator of an insurance company to recover from a bonding company the amount of a bond guaranteeing a bank deposit of the insurance company, where the facts showed that, when the insurance company procured the bond, it fraudulently concealed from the defendant surety knowledge possessed by it of the insolvent condition of the bank, held that there could be no recovery.—Phillips v. United States Fidelity & Guar. Co., N. Y., 193 N. Y. S. 467.

26.——"Nearest Relative."—Where the by-laws of a beneficial association of which a wife was a member provided for payment of insurance to the "nearest relative" of a member, her surviving husband was entitled to the insurance as the "nearest relative," which was a term used to point out the person entitled to take personal property under the statutes of distribution or jure mariti.—Eckert v. Star of Elizabeth Council, No. 37., N. J., 116 Atl. 708.

27.—— Subrogation. — An insurance company's right against a tort-feasor, through whose negligence loss occurred, to recover the amount paid on the policy covering such loss, is not barred by a settlement between the latter and the insured for a sum less than such tart-feasor's liability, though insured gave a full release; such release being a fraud on the insurer.—Camden Fire Ins. Ass'n v. Prezioso, N. J., 116 Atl. 694.

28. **Intoxicating Liquors**—Possession.—139—Defendant given liquor and told to drink as much as he desired and return remainder held not in "possession" of liquor.—State v. Munson, Kan., 206 Pac. 749.

29.——Search and Seizure.—Where policemen lawfully entered a saloon, seizing a pitcher of intoxicating liquor from manager's hands, under circumstances indicating that he was unlawfully disposing of it, was not unlawful, though the officers had no warrant; they being justified in taking cognizance of the fact that a crime was being committed, and no search being required to find the evidence thereof.—State v. Llewellyn, Wash., 205 Pac. 394.

30.——Unlawful Possession.—Under an information for unlawful possesion of intoxicating liquors, the prosecution is not required to prove that defendant did not have a permit authorizing such possession.—Laurie v. United States, U. S. C. C. A., 278 Fed. 934.

31.——Unlawful Possession.—A conviction for unlawful possession of intoxicating liquor cannot be sustained where there is no evidence to show that the liquor is intoxicating.—Blue v. State, Okla., 205 Pac. 774.

32. **Landlord and Tenant** — Crops.— A landlord may not enforce his landlord's lien against a purchaser in good faith from the tenant, where the landlord intrusts the tenant with the carrying of the products to market and the selling of them for the landlord. And where a landlord habitually permits the tenant to sell the products and brin the proceeds to the landlord, he makes such tenant his agent for the sale of the products, and if the agent fails to pay over the funds so derived from such sale, the landlord cannot recover o the buyer the value of the products in such case.—Phillips v. Thomas, Miss., 91 So. 420.

33.——Expiration of Lease.—When the term granted by a lease is in terms made liable to expiration on the giving of a notice of a sale of the property, the landlord may enforce the conditional limitation by summary proceedings, both against the tenant and the subtenant.—112-114 Ridge Street Corporation v. Glickman, N. Y., 193 N. Y. S. 448.

34. **Master and Servant**—Assault.—Where manager of a store participated in an assault on a patron by an operative of a private detective agency employed for the protection of a store, by his presence and failure to lend protection when he could and should have protected her, the owner of the store was liable.—Williams v. F. & W.Grand Five, Ten and Twenty-Five Cent Stores, Pa., 116 Atl. 652.

35.——Assumption of Risk.—A ladder 25 feet long, permanently fixed to the side of a building, having the rungs nailed in mortises in the perpendicular side pieces, is not a simple tool, risk of defects in which is assumed by a workman required to use it, but a part of the place to work, and it is the duty of the employer to exercise reasonable care to see that it is properly inspected and kept in safe condition.—Alaska Packers' Ass'n v. Gover, U. S. C. C. A., 278 Fed. 927.

36. **Municipal Corporations** — Excavations. — Pedestrian who had knowledge of an excavation in a street had the right, in traversing the street at night, to assume that the excavation would not be left in an unguarded and dangerous condition.—Meindersee v. Meyers, Cal., 205 Pac. 1078.

37.——Illegal Contract.—A company entering into a contract with a city to furnish an article capable of being manufactured only by patented machines, in violation of the charter of the city, with full knowledge of the invalidity of the contract, was in no position to invoke doctrines of equity in an action by a taxpayer in behalf of the city to recover money illegally paid to it under the contract.—Neacy v. Drew, Wis., 187 N. W. 218.

38.——Negligence.—In an action for damages for personal injuries as the result of a fall caused by slipping on a banana peel on the sidewalk, it was error to allow plaintiff to show that the assistant to the janitress of the adjoining building was drunk at the time.—Frank v. Muller, N. Y., 193 N. Y. S. 416.

39. **Negligence**—Admissibility of Evidence. — In a wife's action for injuries sustained when a automobile driven by her husband was struck by defendant's street car, testimony that husband had never had an accident before held inadmissible.—Friedman v. United Rys. Co. of St. Louis, Mo., 238 S. W. 1074.

40.—— Proximate Cause of Injury. — Where a driver negligently left a horse unhitched and unattended, as the result of which it ran away and injured plaintiff, such negligence was the proximate cause of plaintiff's injuries, though the actual occurrence might have seemed improbable.—Jordan v. Eisele, Pa., 116 Atl. 675.

41. **Principal and Agent**—Authority of Agent.—Agent's conduct did not give him apparent authority, where other party had no notice thereof; agent's unsworn statements not competent to establish his authority or other person's knowledge of his acts.—Foye Tie & Timber Co. v. Nicholas, Miss., 91 So. 395.

42.——Powers of Foreman.—A contract to give a crippled employee employment for life is so out of the usual that authority to make it would not come under the ordinary powers of a mere foreman or boss or even of an agent of mere general powers.—Fisher v. John L. Roper Lumber Co., N. C., 111 S. E. 857.

43. **Railroads**—Crossing.—An instruction that, if the private crossing where deceased was killed was a place at which an interurban railroad, its agents and employees might reasonably expect some one to be present, it was the duty of the railroad, its agents and employees to maintain a lookout, held too broad and ambiguous as not limiting such duty to the motorman but including the conductor, and perhaps requiring a watchman at the crossing.—Poe v. Kansas City, C. C. & St. J. Ry. Co., Mo., 238 S. W. 1082.

44. **Receivers**—Preference.—Under Labor Law N. Y. § 9, giving a preference to wages of employees of corporations for whom receivers are appointed, and section 2, defining "employee" as "mechanic," workingman," or "labor," the president and general manager of a corporation, who was in effect the owner of the business, is not entitled to the preference for his salary, though in his endeavor to make the adventure a success he did much of the work of a mechanic, since manual work was not what he was hired to do, and he could have drawn his salary without doing it.—Van Vlaanderen v. Peyet Silk Dyeing Corporation, U. S. D. C., 278 Fed. 993.

45. **Sales**—Breach of Contract.—A letter by the buyer, advising the seller not to ship any more of the goods under the contract until further instructed, was evidence of an anticipatory breach of contract.—National Spun Silk Co. v. Peerless Silk Mills Corporation, N. J., 116 Atl. 711.

46.——Divisible Contract.—In view of Personal Property Law, § 156, defining divisible contracts, where a contract for the sale of ribbons was divisible into three groups, the fact that the parties contemplated but one single delivery would not in itself make the transaction an entire contract, and acceptance of a part would not justify an implication of assent to take the remainder.—Commercial Ribbon Co. v. Elbee Chocolate Co., N. Y., 193 N. Y. S. 510.

47.——"Spot Cash."—A provision in a contract for the sale for $16.00 of goods to be imported, and which were not tendered for delivery until six months thereafter, that payment was to be "net spot cash on delivery of the documents" did not require the buyer to have the cash always on hand to pay the moment the documents were tendered, but gave him a reasonable time within which to make payment after such tender.—Strasbourger v. Leerburger, N. Y., 134 N. E. 834.

48.——Title.—In an action by a buyer for conversion of cars of oil by defendants, where the buyer's contract provided for delivery into the buyer's cars at the factory, such delivery passed title to the buyer.—Procter & Gamble Co. v. Peters, White & Co., N. Y., 134 N. E. 849.

49.——Plaintiff, who merely had a contract to purchase wire from a railroad company, who had never paid the company therefor and who had never taken possession of the wire, could not recover the purchase price thereof from defendants, to whom plaintiff had sold wire, under Personal Property Law, § 144, subd. 1, entitled seller to sue for purchase price only where title has passed to buyer, since the plaintiff, not having acquired title

to the wire, could not pass title to the defendants, in view of section 98, section 100, rule 5, section 144, subd. 2, 3; and section 145.—Smiley Steel Co. v. Schmoll, N. Y., 193 N. Y. S. 522.

50. **Street Railroads**—Pedestrian.—A pedestrian whose location at a crossing prevents his knowing the actual speed of an approaching street car has a right to assume that it is traveling within the prescribed speed limit.—Hahn v. United Rys. Co. of St. Louis, Mo., 238 S. W. 529.

51. **Taxation**—Choses in Action.—For the purpose of taxation, choses in action follow and attach to the domicile of the owner, except where the possession and control of the property right has been localized in some independent business or investment away from the owner's domicile so that its substantial use and value primarily attach to and become an asset of the outside business.—Westinghouse Electric & Mfg. co. v. Los Angeles County, Cal., 205 Pac. 1076.

52. **Trusts**—Constructive Fraud.—A husband and father cannot claim that his daughter stood in a fiduciary relationship to him so as to render a conveyance by himself to the wife and daughter constructively fraudulent so as to have a trust declared where the trail court found sufficient evidence that he had no interest in the property conveyed, but that it belonged to the wife, and that he merely joined in the conveyance as the husband of owner.—Parshall v. Parshall, Cal., 205 Pac. 1081.

53.——Implied.—Real Property Law, § 93, providing that, if a deed or devise is made to one person to the use of or in trust for another, no estate or interest, legal or equitable, vests in the trustee and that such statute should not extend to trusts arising or resulting by implication of law, held applicable only where the trust is declared in writing.—Gabler v. Gabler, N. Y., 193 N. Y. S. 500.

54. **Uniform Sales Act**—Stock Certificates.—The Uniform Sales Act, made applicable only to goods" and "documents of title to goods," held applicable to certificates of corporate stock in view of St. 1921, § 1684t76, defining "goods" as chattels personal other than things in action and money, and defining "document of title to goods" as including any bill of lading, dock warrant, warehouse receipt, or order for the delivery of goods or any other document used in the ordinary course of business in the sale or transfer of goods, and in view of the Uniform Stock Transfer Act, relating to transfer of shares of corporate stock.—Smith v. Lingelback, Wis., 187 N. W. 1007.

55. **Vendor and Purchaser**—Option.—A provision in a contract that, if the vendor's title is not good and cannot be made good within a specified time, the contract shall become void and the initial payment refunded, does not convert it into a mere option to purchase.—Ballard v. Friedman, Minn., 187 N. W. 518.

56.——Priority.—Where a subsequent purchaser for value obtains a deed for land through an agent, and the agent, while negotiating therefor, is informed that the land has already been sold and conveyed to another, such notice to the agent is notice to his principal, and, though the subsequent purchaser's deed be first recorded, it will not take priority over the deed first made, and it may be canceled and set aside by a court of equity in a proper proceeding for that purpose.—George v. Stansbury, W. Va., 111 S. E. 598.

57. **Waters and Water Courses**—Diversion.—In an action to restrain diversion of waters by appropriators above, a contention that use of water for rice culture is a waste thereof, and should be prohibited, involves a legislative question which the court cannot consider.—Town of Antioch v. Williams Irr. Dist., Cal., 205 Pac. 688.

58. **Wills**—Construction.—Constructed as intending that share of legatees dying prior to life tenant in lands should pass to legatees' heirs rather than heirs of her husband.—In re Freeman's Estate, Minn., 187 N. W. 411.

59. **Workmen's Compensation**—"Accident."—Where an employe suffering from a nervous condition caused by sulphuric acid fumes accidentally let a radiator slip through a hole in the floor, and it fell, striking a fellow-employe on a lower floor, rendering him unconscious, and the former thereby received a shock causing a delirious condition from which he died within two weeks, held, that death resulted from an "accident."—Klein v. Len H. Darling Co., Mich., 187 N. W. 400.

60.——Bartender.—Compensation cannot be recovered under Workmen's Compensation Law for injury to a bartender employed in a saloon at a time, when the sale of intoxicating liquors was unlawful; a "saloon" being a place where intoxicating liquors are sold and drunk.—Herbold v. Neff, N. Y., 193 N. Y. S. 244.

61.——Course of Employment.—Where the manager of a store who was paid a weekly wage and commission, and who was required by his employers to take home with him each night the money received after banking hours, was injured in a street accident while he was taking such money home by his usual route, pursued to avoid danger from holdups, the injury was compensable under the Workmen's Compensation Act as one arising "out of and in course of employment," the expression being defined as covering accidents to an employe while he is discharging some duty he is authorized or directed to perform for the furtherance of his employer's business.—Clifton v. Kroger Grocery & Baking Co., Mich., 187 N. W. 380.

62.——Course of Employment.—An injury sustained by an employee by slipping while descending from a painter's staging by means of a rope not designed or used for the purpose of ascending or descending, but which the employee used because another man was on the ladder, did not result from the employment as a natural consequence, and did not arise out of the employment.—De Cosat's Case, Mass., 135 N. E. 135.

63.——Dependent.—Under Workmen's Compensation Act, § 26, providing that dependency shall be determined as of the date of the accident to the employee, irrespective of any subsequent change in conditions, a woman who married a man on the day after he was injured would not be a "dependent" and entitled to the compensation provided in section 25.—Dahlquist v. Industrial Commission, Nev., 206 Pac. 197.

64.——Disease.—The compensation may be awarded for an injury, although there is a pre-existing disease, if the disease is aggravated and accelerated by such injury, but will not be awarded, if the disability is due solely to a pre-existing disease and would have arisen regardless of the injury.—Keller v. Industrial Commission, Ill., 135 N. E. 98.

65.——Diversity of Employment.—The Workmen's Compensation Act recognized the fact that the same employer may conduct different departments of business, some of which fall within the act, and some of which do not.—Southwestern Grocery Co. v. State Industrial Commission, Okla., 205 Pac. 929.

66.——Delay in Notice.—Where servant's injury first seemed comparatively insignificant, and then pneumonia set in, and later an ugly abscess developed at the place of the injury, with the consequent suffering, weakness, and natural inability or disinclination to give thought to business matters, the Industrial Accident Commission did not err in awarding compensation, though notice of injury was not served on the employer until fifty days after the accident, instead of thirty days, as required by Workmen's Compensation Act, §§ 17-20; the situation being within the meaning of term "unforeseen cause" excusing delay.—Wardwell's Case, Me., 116 Atl. 447.

67.——Insufficient Number of Workmen.—The proceedings in an action for compensation considered, and held the Workmen's Compensation Act did not apply to the injured workmen's employers, whose business was drilling oil wells, because they had not employed five or more workmen continuously for more than one month, at the time of the accident. Gen. St. 1915, § 5902.—Stover v. Davis, Kan., 205 Pac. 605.

68.——Hazardous Occupation.—The operation of a small sawmill by a farmer cutting lumber for the purpose of constructing a dwelling house held neither "farming" nor work incidental to "farming," classified as a nonhazardous occupation by Workmen's Compensation Act and a workman employed in the mill was engaged in a "hazardous occupation" within the statute, regardless of the location, ownership or size of the mill, and however, brief his employment.—Farrin v. State Industrial Acc. Commission, Ore., 205 Pac. 984.